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8 CHIEF MICHEL MOORE

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 JONATHAN PELTZ and KATHLEEN
13 GALLAGHER

14 Plaintiffs,

15 v.

16 CITY OF LOS ANGELES, a
17 municipal entity; CHIEF MICHEL
MOORE, a public entity, and DOES 1
through 10, inclusive,

18 Defendants.
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Case No. 2:22-cv-03106-MWF-AGR

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT CHIEF MICHEL
MOORE'S MOTION TO DISMISS
FIRST AMENDED COMPLAINT**

[Fed. R. Civ. Proc. 12(b)(6)]

Date: February 27, 2023
Time: 10:00 a.m.
Courtroom: 5A
Judge: The Honorable Michael W.
Fitzgerald

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1 **I. INTRODUCTION**

2 Plaintiffs Jonathan Peltz and Kathleen Gallagher (“Plaintiffs”) sue Chief
3 Michel Moore for his role as chief of the Los Angeles Police Department. In this
4 First Amended Complaint (“FAC”), Plaintiffs bring only one claim against Chief
5 Moore for supervisory liability.¹ Plaintiffs admit Chief Moore was not present the
6 night of their arrests and could not have been personally involved in their arrests.
7 Still, Plaintiffs attempt to extend liability to him. Rather than pleading concrete
8 factual allegations about things such as training programs, supervision of
9 subordinates, and policies, practices, and customs, Plaintiffs simply put forth
10 conclusory allegations that do nothing more than track the elements of the claim
11 they wish to advance in a threadbare fashion. Plaintiffs’ general references to dated
12 articles and settlements do not factually develop their conclusions. Consequently,
13 Chief Moore seeks dismissal of Plaintiffs’ claim pursuant to Rule 12(b)(6) of the
14 Federal Rules of Civil Procedure on the grounds that Plaintiffs fail to allege facts
15 upon which relief can be granted.

16 **II. ALLEGATIONS IN THE COMPLAINT**

17 Plaintiffs allege the following as part of their Complaint. They are reporters
18 for Knock LA, a news website. (FAC ¶¶ 22, 27.) At about 5:00 p.m. on the evening
19 of March 25, 2021, Plaintiff arrived near Echo Park Lake to report about a protest
20 concerning the removal of the homeless encampment at Echo Park. (*Id.*) Plaintiffs
21 stood on Lemoyne Street next to the Angelus Temple to observe the protest. (*Id.* at
22 ¶ 29.) The people on Lemoyne Street were told to move and/or disperse at least
23 twice. (*Id.* at ¶¶ 30-33.) More specifically, at 8:10 p.m., Plaintiffs heard LAPD
24 officers say, “members of media disperse now.” (*Id.* at ¶ 32.) Plaintiffs learned that
25 the LAPD was telling reporters to go to a media staging area on the other side of the
26

27 ¹ In their original complaint, Plaintiffs brought the following claims against Chief
28 Moore: (1) *Monell* municipal liability under 42 U.S.C. § 1983; (2) violation of the
Bane Act; (3) negligence; and (4) false arrest/false imprisonment.

1 Angelus Temple, but they chose not to go because this area supposedly did not
2 have a clear view of the police action against the unhoused people along the lake.
3 (*Id.* at ¶ 33.) The LAPD then “trapp[ed]” Plaintiffs by occupying both sides of the
4 block on Lemoyne Street (referred to as “kettling”). (*Id.* at ¶ 35.) Plaintiffs
5 identified themselves as members of the press, but were still arrested. (*Id.* at ¶ 38.)

6 Plaintiffs do not allege that Chief Moore was present during any part of the
7 protest or Plaintiffs’ arrests or that he made or directed any action during the
8 protest, including the arrests. Quite the opposite. Plaintiffs allege that Chief Moore
9 delegated authority to others within his command staff to act as final policymakers
10 in determining the response to the Echo Park Lake protest. (*Id.* at ¶ 53.) Plaintiffs
11 also allege that there was no time, opportunity, or procedure for anyone (such as
12 Chief Moore) to review or revise the decisions made at the protest before they were
13 implemented. (*Id.*)

14 Plaintiffs make the following allegations in regards to Chief Moore. He is a
15 policymaker for his department. (*Id.* at ¶ 19.) The LAPD prepared an “Event Action
16 Plan” for its plan to remove the unhoused people living along Echo Park Lake and
17 Chief Moore reviewed this plan. (*Id.* at ¶ 52.) Plaintiffs do not allege facts
18 regarding the contents of this plan or how Chief Moore’s review of this plan
19 supports their claim, if that is in fact what they are attempting to allege. Plaintiffs
20 also allege that

21 . . . Chief Moore maintained unconstitutional customs, practices, and
22 policies of restricting or retaliating against the press for attempting to
23 gather news on police activity, inadequate training regarding the First
24 Amendment right of the press and the public to record police activities
25 in public, detaining members of the press without probable cause, and
26 inadequate discipline of police officers who violate constitutional
27 rights of the press.

28 (*Id.* at ¶ 81.)

1 Plaintiffs also allege that Chief Moore had actual or constructive knowledge
 2 of these unlawful policies or customs and that he “acted or failed to act with
 3 deliberate indifference to both the foreseeable consequences of these policies and to
 4 Plaintiffs’ constitutional rights” and that he disregarded known or obvious
 5 consequence of training deficiencies which caused Defendant Does to violate
 6 Plaintiffs’ constitutional rights. (*Id.* at ¶¶ 82, 83.)

7 **III. LEGAL STANDARDS APPLICABLE TO THIS MOTION**

8 A court may dismiss a complaint under Federal Rules of Civil Procedure
 9 12(b)(6) when it does not contain enough facts to state a claim for relief that is
 10 plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
 11 claim has facial plausibility when the plaintiff pleads factual content that allows the
 12 court to draw the reasonable inference that the defendant is liable for the
 13 misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “The
 14 plausibility standard is not akin to a ‘probability requirement,’ but it asks for more
 15 than a sheer possibility that a defendant has acted unlawfully.” *Id.* “While a
 16 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed
 17 factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his
 18 ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic
 19 recitation of the elements of a cause of action will not do . . . Factual allegations
 20 must be enough to raise a right to relief above the speculative level . . .” *Twombly*,
 21 550 U.S. at 555.

22 In considering a motion to dismiss, a court must accept the plaintiff’s
 23 allegations as true and construe them in the light most favorable to the plaintiff. *Id.*
 24 at 550. However, mere “conclusory allegations of law and unwarranted inferences
 25 are not sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696,
 26 699 (9th Cir. 1998). “Threadbare recitals of the elements of a cause of action,
 27 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.
 28 A motion to dismiss is also appropriate where a plaintiff discloses some absolute

1 defense or bar to recovery in his pleading. Fed. R. Civ. P. (12)(b)(6); *Quillers v.*
 2 *Barclays American Credit, Inc.*, 727 F.2d 1067, 1069 (11th Cir. 1984), cert. denied,
 3 476 U.S. 1124 (1986).

4 **IV. ARGUMENT**

5 **A. Plaintiffs' Fifth Cause of Action Does Not Set Forth Sufficient** 6 **Facts to Plead a Supervisory Liability Claim**

7 Plaintiffs have not sufficiently alleged a supervisory liability claim against
 8 Chief Moore. To prove a claim for supervisory liability under section 1983,
 9 Plaintiffs must show that they were deprived of a constitutional right and that either
 10 the supervisor was personally involved in the constitutional deprivation, or that “a
 11 sufficient causal connection exists between the supervisor’s wrongful conduct and
 12 the constitutional violation.” *Felarca v. Birgeneau*, 891 F.3d 809, 819-20 (9th Cir.
 13 2018) (internal quotations omitted). Plaintiffs must allege facts that demonstrate
 14 that Chief Moore’s conduct was both the actual and proximate cause of an alleged
 15 injury and that his acts were more than mere negligence. *Harper v. City of Los*
 16 *Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008); *Castro v. County of Los Angeles*, 833
 17 F.3d 1060, 1071 (9th Cir. 2016). A supervisor must have notice of the subordinates’
 18 unconstitutional acts in order to be liable for supervisory liability. *Hickman v. City*
 19 *of Berkeley*, No. C -11-04395 EDL, 2012 WL 12910620, at *13, 14 (N.D. Cal.
 20 Nov. 1, 2012).

21 Plaintiffs believe they meet the requirements for supervisory liability because
 22 they alleged that Chief Moore “maintained unconstitutional customs, practices, and
 23 policies of [1] restricting or retaliating against the press for attempting to gather
 24 news on police activity, [2] inadequate training regarding the First Amendment
 25 right of the press and the public to record police activities in public, [3] detaining
 26 members of the press without probable cause, and [4] inadequate discipline of
 27 police officers who violate constitutional rights of the press.” (FAC at ¶ 81).

28 The alleged policies and practices are not buttressed by sufficient allegations

1 of fact. In *Starr v. Baca*, the plaintiff adequately alleged that the supervising
2 defendant knew that his subordinates were engaged in culpable action by alleging
3 that the defendant (1) received a “findings letter” from a Department of Justice
4 investigation finding a continued and serious pattern of constitutional violation
5 including inmate on inmate violence, (2) received weekly reports from his
6 subordinates reporting deaths and injuries in the jail, (3) had been part of a
7 memorandum of understanding to correct constitutional violations to which inmates
8 were being subjected to, (4) received repeated notice of numerous violations
9 regarding failure to supervise from his in-house lawyers (with specific incidents
10 listed in the complaint), (5) was named as a defendant in a suit where a deputy
11 falsified information that led to the beating of a prisoner by other prisoners, and (6)
12 received on going reports about inmate abuse from special counsel and the Office
13 of Independent Review. 652 F.3d 1202, 1209-12 (9th Cir. 2011). The court found
14 that, based on these allegations, the supervising defendant was on notice and that
15 the plaintiff established a plausible nexus between the subordinates’ wrongdoings
16 and the supervisor’s policies and acquiescence in misconduct. *Id.* at 1216-17.

17 By comparison, it is insufficient to simply allege that the defendant
18 supervisor knew of the violations of constitutional rights and failed to act to prevent
19 them, that the supervisor did nothing to stop his subordinates from engaging in
20 wrongful conduct, or that the supervisor maintained unconstitutional policies
21 without detailing the contents of those policies. *See Rosales v. Cnty. of San Diego*,
22 511 F. Supp. 3d 1070, 1085 (S.D. Cal. 2021); *see also Cavanaugh v. Cnty. of San*
23 *Diego*, No. 3:18-CV-02557-BEN-LL, 2020 WL 6703592, at *29 n.21 (S.D. Cal.
24 Nov. 12, 2020), *aff’d*, No. 20-56311, 2021 WL 6103115 (9th Cir. Dec. 22, 2021)
25 (“[W]hile Plaintiffs[] conclusorily allege Sheriff Gore was aware deputies failed to
26 follow policy and procedure, there are no allegations as to how he knew this, when
27 he was informed of it, any basis for this knowledge, or which policies he knew were
28 being violated. Thus, such generalized allegations of knowledge fail to meet the

1 *Iqbal* standard.”); *Cox v. California Forensic Med. Grp.*, No. 14-CV-04662-KAW,
2 2015 WL 237905, at *1 (N.D. Cal. Jan. 14, 2015) (“It is insufficient for a plaintiff
3 only to allege that supervisors knew about the constitutional violation and that they
4 generally created policies and procedures that led to the violation, without alleging
5 a specific policy or a specific event instigated by them that led to the constitutional
6 violations.”); *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (holding same);
7 *Johnson v. City of Berkeley*, No. 15-CV-05343-JSC, 2016 WL 928723, at *3–4
8 (N.D. Cal. Mar. 11, 2016) (“It is one thing to plead that City Manager Daniel and
9 Chief Meehan ordered ‘the police [to] take an aggressive crowd control approach’
10 and another to say that because they did nothing (i.e., through their omission) the
11 police took such an approach. ‘[P]laintiffs [] must allege some culpable action or
12 inaction for which a supervisor may be held liable.’ ”) (internal citations omitted);
13 *Tapia Carmona v. Cnty. of San Mateo*, No. 18-CV-05232-LHK, 2019 WL
14 4345973, at *7 (N.D. Cal. Sept. 12, 2019) (holding a plaintiff must “specify the
15 content of the policies, customs, or practices the execution of which gave rise to
16 [Plaintiff’s] constitutional injuries” and dismissing claim against sheriff when the
17 plaintiff did not “ ‘specifically alleg[e] numerous incidents’ of unconstitutional
18 conduct by subordinates or that [the sheriff] was ‘specifically ... given notice of all
19 of these incidents,’ including specific allegations of ‘systematic problems . . . under
20 his supervision.’ ”) (internal citation omitted); *Mackinney v. Nielsen*, 69 F.3d 1002,
21 1008 (9th Cir. 1995) (allegations that a police chief was aware of similar incidents
22 where the plaintiff’s rights were violated by police were not sufficient to allege that
23 the chief adopted a policy so deficient that it repudiated the plaintiff’s rights);
24 *Alvarez-Orellana v. City of Antioch*, No. C-12-4693, 2013 WL 3989300, at *5
25 (N.D. Cal. Aug. 2, 2013) (rejecting the plaintiffs’ allegations that the sheriff was
26 aware, knew and had reasonable basis to learn and/or to believe that his
27 subordinates at the police department engaged in a pattern and practice in violation
28 of the law and finding that there was no basis for inferring notice based on a court

1 order that came 15 years prior to the sheriff taking office).

2 In regards to training, Plaintiffs must allege facts about the purported
3 inadequacies of the officers' training. *Shirazi v. Oweis*, No. 5:21-CV-00136-EJD,
4 2022 WL 445763, at *3–4 (N.D. Cal. Feb. 14, 2022) (finding allegations the
5 supervisors “knew officers had inadequate training and that they ‘caused the
6 violation of [P]laintiff's constitutional rights as a result of their ... deliberate
7 indifference to the need for more or different training’ ” to be too conclusory);
8 *Moss v. U.S. Secret Serv.*, 711 F.3d 941, 968 (9th Cir. 2013) (finding claim against
9 supervisors should be dismissed because the protestors “allege[d] no facts
10 whatsoever about the officers' training or supervision, nor d[id] they specify in
11 what way any such training was deficient.”).

12 Here, it is not clear what alleged facts supposedly support Plaintiffs' claim of
13 an unconstitutional policy or custom. It is not even clear what theory of supervisory
14 liability Plaintiffs are alleging. Chief Moore either “maintained unconstitutional
15 customs, practices, and policies” or “had either actual or constructive knowledge of
16 the unlawful policies, practices, and customs” and “acted or failed to act with
17 deliberate indifference [sic] to both the foreseeable consequences of these policies.”
18 (Compl. at ¶¶81, 82.) There are no allegations in the complaint specific to training
19 (much less training regarding the First Amendment rights of the press) other than
20 that it was “inadequate.” (Compl. ¶81.) There are also no allegations in the
21 complaint regarding discipline of officers who violate constitutional rights of the
22 press (again, other than any such discipline was “inadequate.”) (*Id.*) Plaintiffs claim
23 that there were policies to retaliate against the press for attempting to gather news
24 and to detain the press without probable cause, but Plaintiffs fail to name such
25 policies or detail their contents. Moreover, there are no allegations that Chief
26 Moore gave orders that led to the alleged constitutional violations or that he
27 witnessed any alleged unconstitutional acts—much less allegations as to which
28 officers ordered or committed alleged unconstitutional acts or that Chief Moore had

1 notice that these officers had previously committed similar constitutional violations.

2 Plaintiffs do claim in their complaint that “LAPD has an extensive history of
3 violating the rights of journalists” and cite to various articles. (Compl. ¶7.) The first
4 article is from 14 years before Plaintiffs’ arrest and alleges protesters and
5 journalists were assaulted when the police chief was Chief William Bratton.
6 (Compl., fn. 1.) The second article is from seven years before Plaintiffs’ arrest and
7 quotes an individual who believed the LAPD used constitutionally dubious crowd-
8 control tactics. (*Id.* at fn. 2.) The article does not specifically mention the press but
9 does state that protesters were arrested after disrupting traffic and dispersal orders
10 were given. (*Id.*) The third article is an Op-ed published nine months *after*
11 Plaintiffs’ arrest and references the Echo Park protest and another subsequent
12 protest. (*Id.* at fn. 3.) Like the first two articles, it does not state whether the arrests
13 were found to be unconstitutional. (*Id.*) The final article was also published nine
14 months *after* Plaintiffs’ arrest, does not support what it is cited for, and discusses
15 allegations from across the United States. Lastly, Plaintiffs generally allege that
16 “unlawful arrests and police brutality against journalists is a national problem,”
17 citing to an “incident database” which includes self-reported alleged assaults and
18 arrests across the country without limitation to time. (*Id.* at ¶9, fn. 5, 6.) Perhaps
19 most importantly, there is no information or cited authority as to whether these
20 alleged assaults/arrests were found to be unconstitutional. These references,
21 unlimited by time and geography of arrests that may have been legally justified
22 and/or supported by probable cause, do not support the claim that, as of March
23 2021, the LAPD had an unconstitutional custom of: retaliating against the press,
24 providing inadequate training regarding treatment of the press, detaining press
25 without probable cause, or failing to discipline officers who violate constitutional
26 rights of the press, or that Chief Moore had notice of or maintained such customs.

27 Plaintiffs also reference a few past settlement agreements concerning agreed
28 upon police practices for demonstrations (e.g., use of helicopters, less lethal tools,

1 etc.). (*Id.* at ¶49.) These settlements also do not support Plaintiffs’ claim that Chief
2 Moore had knowledge that the LAPD in 2021 (and specifically the officers who
3 were present at the Echo Park protest) were engaged in conduct that would deprive
4 journalists of their constitutional rights. In other words, these settlement agreements
5 do not establish notice of wrongdoings or a causal nexus. First, the latest settlement
6 was in 2014, seven years before this 2021 incident. The remaining settlements were
7 ten or more years older. (Appendices 5–8 in the March 15, 2021 Independent
8 Examination.) Plaintiffs do not allege that Chief Moore was involved in or aware of
9 these settlements. Second, Plaintiffs allege that these settlements actually “resulted
10 in changes to LAPD policies, procedures, and training regarding kettling, dispersal
11 orders, excessive force, and arrests during demonstrations.” (Compl. at ¶49.) Third,
12 the independent examination and settlements do not reference treatment of the press
13 specifically, such as referencing retaliation against the press for gathering news on
14 police activity. It is therefore unclear how these documents support the allegation
15 that Chief Moore maintained or had constructive notice of “unconstitutional
16 customs, practices, and policies of restricting or retaliating against the press for
17 attempting to gather news on police activity, inadequate training regarding the First
18 Amendment right of the press and the public to record police activities in public,
19 detaining members of the press without probable cause, and inadequate discipline
20 of police officers who violate constitutional rights of the press.” (Compl. at ¶81.)

21 Case law also holds that these articles and settlements are insufficient factual
22 support for a supervisory liability claim for a multitude of reasons. First, courts
23 have held that prior complaints that a protestor suffered injuries or was arrested and
24 a supervisor’s awareness of these complaints does not equate to a supervisor’s
25 awareness of his subordinates’ unconstitutional acts as the complaints could be the
26 result of lawful uses of force or lawful arrests and prior complaints alone are not
27 enough to suggest that unlawful behavior will be repeated. *See Felarca*, 891 F.3d at
28 820–23. In *Felarca*, the plaintiff alleged the police chief ordered the removal of

1 tents, protests ensued, and the chief knew that batons had been used to injure
2 protesters during an earlier afternoon protest. *Id.* at 820. The Ninth Circuit found
3 these allegations were not sufficient to state a claim of supervisory liability because
4 there were no allegations that the police chief directly ordered the officers to beat
5 protesters with batons and he “had no reason to assume that police would use force
6 beyond the bounds of [the applicable] policy.” *Id.* at 820-821. While there were
7 allegations that some protesters were injured during the protests earlier that day,
8 this “hardly show[ed]” police exceeded their authority or that they would do so
9 again during an evening protest because injuries could be caused by lawful uses of
10 batons. *Id.* The court deemed plaintiffs’ argument to be “nothing more than an
11 attempt to hold [the chief] liable solely by virtue of [his] office,” which fails
12 because “there is no respondeat superior liability under section 1983.” *Id.*

13 Similarly, in *Sampson v. The City of Los Angeles*, the court dismissed the
14 supervisory claim against Chief Moore despite

15 allegations that Chief Moore was made aware of previous complaints
16 of similar police use of force from the preceding days of protests . . .

17 [E]ven if Chief Moore was allegedly aware that protesters were injured
18 previously, that is not enough to suggest that such techniques would be
19 unlawfully used again. Although some protesters were injured at the
20 previous protests, those injuries may have been due to the use of
21 lawful force . . . While the Complaint alleges there were complaints
22 filed with LAPD from the preceding days of protests, it does not allege
23 sufficient facts to support the contention that Chief Moore knew or
24 should have known that those complaints were true . . . Nor are the
25 allegations as to the failure of Chief Moore to act on previous
26 complaints sufficient to create the inference of a policy that was *the*
27 *moving force* behind the incidents on May 30, 2020.

28 *Sampson v. The City of Los Angeles et al.*, No. LACV2203346JAKADS, 2022 WL

1 18278415, at *9–11 (C.D. Cal. Nov. 22, 2022) (emphasis added); *see also Chappell*
2 *v. Bess*, No. 2:01-CV-01979 KJN P, 2012 WL 3276984, at *17 (E.D. Cal. Aug. 9,
3 2012) (finding a plaintiff’s previous letters to a supervisor warden that a defendant
4 officer had committed wrongdoings did not reasonably put the warden on notice of
5 the alleged misconduct of the defendant because the letters did not contain any
6 allegations that would distinguish them from other inmate communications to the
7 warden in which prisoners alleged wrongful conduct by staff). Accordingly, if
8 unsubstantiated complaints of unconstitutional acts at the same protest, without
9 more, is insufficient to put a supervisor on notice of his subordinates’ continued
10 unlawful behavior, Plaintiffs’ citation to articles—in which individuals, seven or
11 more years earlier, alleged the LAPD used questionable crowd-control tactics or
12 assaulted protesters—do not come close to supporting their legal conclusions that
13 Chief Moore was on notice that his subordinates had numerous unlawful customs
14 toward the press as of March 2021.

15 Second, alleged prior unlawful behavior of subordinates must be similar to
16 the unlawful behavior alleged in the present case and the supervisor must be aware
17 of or involved in the prior complaints to be on notice. The plaintiff in *Sampson*
18 included a detailed history of past protests in Los Angeles that involved claims that
19 LAPD used excessive force and referred to several court settlements arising out of
20 those protests. *Sampson*, 2022 WL 18278415, at *10. In spite of these complaints
21 and settlements, the court did not find that the plaintiff alleged supervisory liability
22 against Chief Moore for any and all claims of excessive force by the LAPD during
23 a protest. Instead, the court looked more specifically at whether the factual
24 allegations of the prior settlements were sufficient to show that Chief Moore should
25 have known that his alleged actions in *Sampson* (ordering boundaries to restrict
26 movements by protesters) would cause officers to violate the constitutional rights of
27 protesters. *Id.*; *see also Pittman v. Cnty. of San Francisco*, No. 13-02095 EJD (PR),
28 2017 WL 10378333, at *9 (N.D. Cal. Jan. 4, 2017) (finding the supervisory liability

1 claim against the sheriff failed despite the plaintiff's assertions that there have been
2 numerous complaints filed against SFSD's deputies for excessive force and that the
3 sheriff should "remain as a Defendant based on pervasiveness" of these lawsuits
4 because there was no specific allegation that the sheriff was personally aware or
5 involved in those complaints, much less involved in the present excessive force
6 claim against the officer defendant); *Johnson v. Baca*, No.
7 CV1304496MMMAJWX, 2013 WL 12131358, at *9 n.47 (C.D. Cal. Sept. 24,
8 2013) (dismissing sheriff from supervisory claim and finding that, although the
9 numerous reports specific to the jail were sufficient to put the sheriff on notice that
10 the conditions experienced by mentally ill inmates were generally poor, they did not
11 put him on notice that mentally ill or suicidal inmates were subject to improper
12 monitoring); *Turano v. Cnty. of Alameda*, No. 17-CV-06953-KAW, 2018 WL
13 3054853, at *9 (N.D. Cal. June 20, 2018) (dismissing supervisor defendants
14 because the plaintiff did not allege facts showing that they knew of the unsanitary
15 conditions or failure to provide feminine hygiene products, despite allegations that
16 the county had a "significant history of . . . housing female inmates in unsanitary
17 and garbage filled cells which pose a health hazard, and failing to provide for the
18 feminine hygiene needs" and despite a prior lawsuit and settlement with similar
19 allegations because the plaintiff did not allege that the supervisor defendants were
20 involved in the suit or the settlement of the suit). Plaintiffs' allegations are
21 insufficient under this analysis as well.

22 The Plaintiffs here do not allege prior complaints—much less prior
23 complaints that name the same officer defendants—that involve the same
24 constitutional violations alleged here. Nor do they allege that Chief Moore was
25 aware of and involved in these complaints so as to be "on notice." The two articles
26 cited by Plaintiffs generally allege that the protesters were assaulted by LAPD and
27 that the crowd control techniques were questionable. Neither the articles nor the
28 settlements state facts, and Plaintiffs do not allege facts, in support of their

1 allegation that Chief Moore maintained or had notice of specific policies regarding
2 retaliating against the press, failed to adequately train officers regarding the First
3 Amendment rights of press, and failed to adequately discipline officers who violate
4 the rights of the press.

5 Plaintiffs also fail to explain why the past settlements should constitute
6 notice sufficient to compel Chief Moore to take preventative measures. As Plaintiff
7 alleges, the prior settlements *resulted in changes* to LAPD policies, procedures, and
8 training regarding kettling, dispersal orders, excessive force, and arrests during
9 demonstrations. (Compl. ¶49) (emphasis added.) The court in *Brooks v Haggett*
10 found the plaintiff had not alleged a supervisory liability claim against a supervisor
11 for failing to act to prevent an officer's alleged use of excessive force when the
12 officer had prior instances of excessive force because the officer had been subjected
13 to disciplinary actions for his past behavior, and the supervisor expected the officer
14 to now abide by the rules and procedures of the department. No. C 07-2615 SBA
15 (PR), 2009 WL 688855, at *10 (N.D. Cal. Mar. 16, 2009). The court found that, in
16 light of the disciplinary action, the supervisor's expectation was reasonable and that
17 it was unreasonable to expect the supervisor to take any preventative action. So too
18 here, it is unclear how the settlement agreements themselves, "resulting in changes
19 to LAPD policies," constituted enough notice to require Chief Moore to take
20 preventative action.

21 Lastly, the *Sampson* court noted in dismissing the supervisory liability claim
22 that the plaintiff did not allege that the involved officers were the officers involved
23 in the prior, similar complaints. *Sampson*, 2022 WL 18278415, at *10. As
24 mentioned above, Plaintiffs fail to allege that the officer defendants who allegedly
25 violated their constitutional rights had previously committed similar unlawful acts,
26 or that Chief Moore was aware of these past acts.

27 Additionally, if there is no constitutional violation, there is no supervisory
28 liability violation. *Alvarez-Orellana*, 2013 WL 3989300, at *8. Plaintiffs admit the

1 press was informed that there was a media staging area located one block over on
2 the other side of the Angelus Temple, which, according to the map in Plaintiffs’
3 Complaint, was outside of the anticipated, impacted area, but within a reasonable
4 view of the unhoused people along the lake and the LAPD line, as was called for in
5 the cited LAPD Media Relations Handbook. (Compl. ¶¶25, 33.) Plaintiffs did not
6 attempt to go to the viewing area and decided to ignore this order. (*Id.* at ¶33.)
7 Plaintiffs also admit that they heard the LAPD give an amplified message, and soon
8 after they directly heard a dispersal order but decided not to leave. (*Id.* at ¶32.)
9 Disobeying a lawful warning to disperse is a misdemeanor. California Penal Code
10 §409. Plaintiffs argue that their arrests as members of the press were in violation of
11 the “LAPD’s October 30, 2020 Press Policy,” which allegedly “require[s] officers
12 to allow ‘media representatives [to remain] behind skirmish lines’ after declaring an
13 unlawful assembly . . .” (*Id.* at ¶40.) The October 30, 2020 letter actually states:

14 When an unlawful assembly has been declared and a dispersal order
15 has been given the Incident Commander (IC) and PIO representative
16 *will* establish a safe working area for members of the media. Officers
17 are reminded that media representatives *may* be allowed behind
18 skirmish lines but may not move back and forth through police lines or
19 otherwise interfere with police actions.

20 Ex. A to the Complaint (emphasis added)). Plaintiffs admit the LAPD provided a
21 safe working area for members of the media and that they simply refused to use it.
22 (See Compl. ¶33 and map on p. 9.)

23 Plaintiffs fail to name a policy that states press are allowed to disobey
24 dispersal orders and remain wherever they please. Accordingly, under Plaintiffs’
25 own allegations, they admit they disobeyed a dispersal order, a misdemeanor
26 offense, and were subsequently arrested. They do not allege facts to support the
27 claim that their arrests were performed to preclude them from exercising their
28 freedom of speech or that their arrests were without probable cause. As Plaintiffs do

1 not sufficiently allege violation of their underlying constitutional rights, they cannot
2 bring a supervisory liability claim.

3 For these reasons, Plaintiffs' supervisory liability claim should be dismissed.

4 **V. CONCLUSION**

5 For the above reasons, Chief Moore's motion to dismiss should be granted.

6
7
8 Dated: January 19, 2023

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17 **CERTIFICATE OF COMPLIANCE**

18 The undersigned, counsel of record for the City Of Los Angeles and Chief
19 Michel Moore, certifies that this brief contains 4,838 words, which complies with
20 the word limit of L.R. 11-6.1.

21 Dated: January 19, 2023

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